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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/599,779	06/28/2007	Thienna Ho	70063.00004	4440

7590 11/13/2009
Thienna Ho
236 West Portal Ave. #511
San Francisco, CA 94127

EXAMINER

YU, GINA C

ART UNIT	PAPER NUMBER
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1611

MAIL DATE	DELIVERY MODE
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11/13/2009

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 10/599,779	Applicant(s) HO, THIENNA	
	Examiner GINA C. YU	Art Unit 1611	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 13 August 2009.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1,4-6,9-11,13,15,17 and 19 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1, 4-6, 9-11, 13, 15, 17, 19 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Continued Examination Under 37 CFR 1.114

A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on August 13, 2009 has been entered.

Claim Rejections - 35 USC § 112

The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

Claim 1 is rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement.

The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention.

Claim 1 recites “an amount of at least 133 mg of methyl sulfonyl methane per kilogram of body weight per day”. The precise dosage of the new claim limitation is not supported by the original disclosure. Applicant asserts in remarks concurrently filed with the amendment that the claim amendment is supported by specification, p. 7, Table

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1, the last row. However, the specification teaches administering 6000 mg per day, which according to applicant corresponds to 135 mg/kg. The presently claimed amount of 133 mg is not seen in the original disclosure.

Claim Rejections - 35 USC § 103

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

Claims 1, 4-6, 9-11, 13, 15, 17, 19 are rejected under 35 U.S.C. 103(a) as being unpatentable over Herschler (US 4296130) in view of Webster's Ninth New Collegiate Dictionary (1991) and Salim (WO 94/05279).

Herschler teaches MSM can be included in a cosmetic or other preparations applied to the skin, and beautifies the complexion, improves the condition of the scalp and hair and help to make the body of the user more flexible and comfortable. The reference also teaches MSM can be administered orally. See col. 2, lines 18 – 46. The reference teaches MSM is inert to the chemistry of the body.

Webster teaches the term "complexion" of skin refers to the hue or appearance especially of the face, as in "a dark complexion". See p. 269, second col. complexion. The usage of the term to denote skin tone is also seen in applicant's specification, p. 5, second paragraph, "a daily maintenance of facial skin tone, that is, to maintain a lighter facial complexion after a desired amount of skin lightening has already been achieved".

Herschler does not teach the dosage of MSM oral administration as required by the present claim.

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Salim teaches a method of treating and improving skin condition by administering methyl sulfonyl methane and a sulfur-containing amino acid. The reference teaches the composition may be administered topically, orally or parenterally. See p. 7, first paragraph. The reference teaches the oral dosage unit contains from 100-500 mg of each of methyl sulfonyl methane and amino acid, and given once or more daily at intervals of from 2-8 hours, most preferably every 6 hours (e.g., 300-1,500 mg taken thrice daily at 6 hour interval or more at 2 hour interval). The reference also teaches topical administration comprising at least 0.5 % w/w of each of the active ingredients, preferably 5 % methyl sulfonyl methane and 2 % cysteine or methionine. See p. 5, first full paragraph. The reference teaches the improvements in skin condition includes combating aging of skin, protection against environment, providing suncreening effects, enhancing the healing of wounds, inflammation, fissures, and maintenance of its vitality, smoothness, firmness and texture. See p. 3, bridging paragraph. The reference indicates , for example, a topical formulation of Example 1.D were applied twice daily for 6 months then once daily for 18 months, resulting in significant improvement in the skin's smoothness, firmness, and wrinkle reduction. See p. 18, second full par.

It would have been obvious to one of ordinary skill in the art at the time of the present invention that the Herschler method of administering MSM to human subjects would bring about changes to, and/or improve, the color and skin tone and/or overall appearance of the skin because the reference teaches MSM "beautifies complexion" of the skin, and the Webster dictionary indicates that complexion refers to the color or appearance of skin in cosmetic art. Thus applicant's claim of development of "a skin

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tone noticeably lighter than the person's natural skin tone" by administering MSM to the patient would naturally flow from practicing the Herschler method, which would have been obviously observed by one of ordinary skill in the art.

Furthermore, orally administering MSM with the amount and dosage within the present claim limitation would have been also obvious in view of the teachings of Salim because 1) Herschler teaches MSM is nontoxic and inert to the chemistry of the body; and 2) Salim provides general teachings of the oral dosage of MSM to obtain cosmetic effects. Generally, differences in concentration or temperature will not support the patentability of subject matter encompassed by the prior art unless there is evidence indicating such concentration or temperature is critical. "[W]here the general conditions of a claim are disclosed in the prior art, it is not inventive to discover the optimum or workable ranges by routine experimentation." See In re Aller, 220 F.2d 454, 456, 105 USPQ 233, 235 (CCPA 1955). In this case, Herschler teaches administration of MSM beautifies complexion of the skin and Salim teaches 1,500 mg of MSM may be orally taken thrice daily at 6 hour interval or more at a more frequent interval to obtain various skin conditioning benefits. Thus the prior arts sufficiently provide conditions of the presently claimed invention for a skilled artisan to work with, and discover the optimum or workable ranges by routine experimentations. In view of the combined teachings of the references, the present claims are viewed an obvious variation of the prior art use of MSM to improve skin complexion.

Response to Arguments

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Applicant's arguments filed August 11, 2009 have been fully considered but they are moot in view of the new grounds of rejection as discussed above.

Conclusion

No claims are allowed.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to GINA C. YU whose telephone number is (571)272-8605. The examiner can normally be reached on Monday through Thursday, from 8:00AM until 6:00 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Sharmila Landau can be reached on 571-272-0614. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/GINA C. YU/
Primary Examiner, Art Unit 1611